



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

SMC
Docket No: 07011-98
23 April 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of a fitness report for 2 March to 4 July 1993.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested fitness report by changing the entry in item 17b (subject of adverse report from outside reporting chain) from "Yes" to "No."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 April 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 28 September 1998, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

7011-98



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610
MMER/PERB
28 Sep 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
STAFF SERGEANT [REDACTED] USMC

Ref: (a) SSgt [REDACTED] DD Form 149 of 20 Jul 98
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 16 September 1998 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 930302 to 930704 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report should not be adverse based solely on her failure to qualify with the 9mm pistol and argues that the Performance Evaluation System Order corroborates her belief. She also alleges an administrative error in Item 17b (adverse).

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Unfortunately, the petitioner has cited the incorrect directive in attempting to establish her argument concerning a mark of "U" in Item 5a. Subparagraph 5001.2a of reference (b) -- the directive in effect at the time the challenged report was prepared -- is specific in stating that such a mark renders a report adverse. As a result, and since the petitioner went "unqualified" with the pistol during the period, the report was adverse and correctly referred to her for signature in item 24 and the opportunity for a rebuttal. This issue is easily confused since the current Order (MCO P1610.7D) no longer renders a report adverse if a Marine fails to qualify with the rifle or pistol, as long as the Marine does everything within his or her capability to attempt to qualify. This is a change from the provisions of reference (b).

b. The petitioner is correct in her belief that Item 17 contains an administrative error. Since the adversity of the report did not surface from outside the command, Item 17b should

(2) PERB

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have been marked "no." The Board does not, however, find this oversight to invalidate the substance of the report. Instead, they have directed modification of the report and correction to the petitioner's Master Brief Sheet.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3b is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps